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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,451	04/20/2001	David Corts	4232-4002	4838

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MORGAN & FINNEGAN, L.L.P.
345 Park Avenue
New York, NY 10154-0053

EXAMINER

CHAMPAGNE, DONALD

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/839,451

Applicant(s)

CORTS

Examiner

Donald L. Champagne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-212 is/are pending in the application.
- 4a) Of the above claim(s) 32-67 and 130-222 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 and 68-129 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 27 September 2006 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-31 and 99-129 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "time of said broadcaster" at the end of every independent claim is used by the claim to mean "time of said broadcast", while the accepted meaning is "the lifetime of the broadcaster." The term is indefinite because the specification does not clearly redefine the term.
5. This rejection can be satisfied by changing "predetermined time of said broadcaster" to -- scheduled time of said broadcast --. The latter phrase is supported, for example, at para. [0009] of the published application (US 20020141491A1).

Claim Rejections - 35 USC § 102 and 35 USC § 103

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4, 6-31, 68-74, 76-102 and 104-129 are rejected under 35 U.S.C. 102(e) as being anticipated by Abecassis (US006192340B1).
9. Abecassis teaches (independent claims 1, 29-31, 68, 96-99 and 127-129) a method, apparatus, and computer readable medium encoded with said method, for coordinating supplemental data transmissions with broadcast data transmitted by a plurality of broadcasters, the method comprising:

receiving schedule information (*providing a broadcast schedule*, col. 16 lines 40-46) for each of a plurality of broadcasters (*a plurality of providers*, col. 11 lines 1-2, and *one or more Multimedia Players 431 delivering radio-on-demand services*, col. 11 lines 22-30)¹, the schedule information including a broadcast schedule;

identifying, from the received schedule information, broadcast data for transmission by a first broadcaster (*A radio-on-demand provider system 411*, col. 11 line 32, *simultaneously access(es) a variety of audio and information resources*, col. 11 lines 27-28, *retrieving from*

¹ Also, from col. 11 lines 3-12: *Participants in the network ... are both providers and end users ...*

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a *Multimedia Player* an end user's music, information and technical preferences, col. 11 lines 36-37);

determining supplemental digital data (*information*, col. 22 lines 65-67, col. 2 lines 11-19 and col. 11 lines 38-40) to be presented to listeners of the broadcast data on a digital data receiver (col. 8 lines 49-51),

transmitting at least a portion of the supplemental data to the first broadcaster (*the received informational items*, col. 2 line 65 to col. 3 lines 4, where *audio library* is defined at col. 2 lines 36-53) prior to the predetermined time of said broadcast/"broadcaster".

10. For independent claims 99 and 127-129, *Multimedia Player 100* reads on a traffic management system (Fig. 1 and the explanation beginning at col. 5 line 25).
11. Abecassis also teaches at the citations given above claims 8-10, 78-80 and 106-108; claims 14-17, 84-87 and 112-116; claims 19-21 and 117-119; claims 22, 23, 89, 90 120 and 121, where the seller of advertising data is nonfunctional and was accordingly not given patentable weight; and claims 24-28, 91-95 and 122-126.
12. Abecassis also teaches claims 2-4, 11-13, 18, 72-74, 81-83, 88, 100-102, 109-111 and 116 (col. 1 lines 34-67); and claims 6, 7, 76, 77, 104 and 105 (col. 11 line 19).
13. Claims 5, 75 and 103 are rejected under 35 U.S.C. 103(a) as being obvious over Abecassis (US005819160A). Abecassis does not teach side band radio broadcasting. Official notice is taken (MPEP § 2144.03) that it was common, at the time of the instant invention.

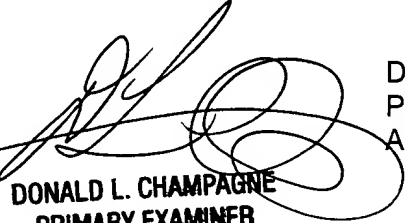
Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 9:30 AM to 8 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.
15. The examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for all *formal* fax communications is 571-273-8300.

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16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
17. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.

9 December 2006


DONALD L. CHAMPAGNE
PRIMARY EXAMINER

Donald L. Champagne
Primary Examiner
Art Unit 3622